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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,382	07/30/2003	Douglas Swingley	14442-1	9565

7590  
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9th Floor  
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06/20/2006

EXAMINER
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HOOK, JAMES F

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/631,382	<b>Applicant(s)</b> SWINGLEY, DOUGLAS	
	<b>Examiner</b> James F. Hook	<b>Art Unit</b> 3754	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4, 5, 7, 17, 18, 20, 21 and 24-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4, 5, 7, 17, 18, 20, 21, and 24-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4, 5, 7, 17, 18, 20, 21, and 24-33 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. Applicant sets forth in the declaration executed on January 27, 2005 in paragraphs 5 and 8, that the fittings and pipe for DWV service as claimed in the present application were sold by Spears Manufacturing Company “for little more than three years”. The instant application was filed on July 30, 2003, and was a continuation of a provisional application filed on March 26, 2003. Therefore, if the claimed product was on sale for a little more than three years from January, 27, 2005 then it was on sale at least by January 27, 2002 which is approximately 1 year and 2 months prior to the filing of any application. Since applicant is swearing under penalty of perjury that all statements are true, and has set forth that the claimed article was on sale for little more than three years from the date of the signing of the declaration, then such is considered adequate proof that such was on sale to the public more than one year prior to the filing of any US application. CPVC is known to inherently be joined by solvent cement. It is noted that materials were sent in which demonstrate the first sale of the currently claimed product on a date that is not a 102(b) bar, specifically August 30, 2002, and further evidence of the invoice for ordering

the first brochure was also provided with a date of May 3, 2002. It is appreciated that the material was sent but there still remains some question as to whether such was disclosed to the public in the form of offer of sale. The examiner believes the first sale of the product had to result in an offer of sale prior to the actual invoice of sale provided, and it is this date that is critical to determining whether an offer of sale was made on the claimed product prior to the 102(b) date, and would not necessarily be dependent upon the date the first brochure was ordered when there are other means to offer sale other than a brochure. Applicant is hereby requested to supply any information on any offer of sale, or any other material which may be a 102(b) bar on the instant application, and if an affidavit or other evidence can be supplied to clearly set the date at which offer of sale on the first order or any order of the claimed subject matter which sets forth that such was clearly not offered for sale prior to March 26, 2002, such would then set the record straight and the above rejection will be dropped. The examiner needs to clearly set forth the first date the claimed subject matter was disclosed to the public to overcome the sworn statement that placed the disclosure to the public date prior to the 102(b) statutory bar date.

Claims 4, 5, 7, 17, 18, 20, 21, and 24-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Chemdrain (892-ref U). The Chemdrain reference states that it is old and well known in the art, to form chemical processing pipes of CPVC for over thirty (30) years, and that the benefits of CPVC are known, can be assembled using solvent or cement, and was used in a variety of chemical processing piping systems of which DWV is known inherent piping uses in processing plants. The use of such for carrying

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certain chemicals is merely intended use and the CPVC pipe is capable due to the material properties of CPVC of carrying the recited chemicals as such is an inherent property of the material and merely intended use. The date of the actual invention of a CPVC processing pipe system is what is 30 years old, the actual date the web page was printed out was merely to supply evidence that such was known, but the actual date the subject matter has existed is 30 years.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 17, 18, 20, 21, 24, 25, 28, 29, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vanesky (577). The patent to Vanesky discloses the recited drain fitting 22 which is formed of a material such as ABS, PVC, or CPVC, where the fittings are used in home water drains which inherently would include sanitary waste, and where the fitting is used with other CPVC pipe components. The use of the term DWV is considered to be merely intended use of the fitting and the fitting of Vanesky is capable of use as a drain as set forth and therefore as a DWV also in that it is used as a drain. Vanesky also discloses that the pipe connections are made with solvent cement, and it is an inherent property of CPVC as well as merely intended use where CPVC piping is capable of carrying different waste fluids. The patent to Vanesky

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discloses all of the recited structure including that such are used with chemical attack in mind with the exception of disclosing what pitch the connections are made with, however, applicant's disclosure on page 2, lines 11-16 set forth that it is old and well known in the art to form pipe connections for use in chemical environments with the same claimed pitch as is now set forth in the claims, therefore applicant is admitting such is old and known in the art. It would have been obvious to one skilled in the art to modify the pitch of the connections in Vanesky to be formed with a specific pitch as such is old and well known in the art as supported by applicants specification, and would help prevent failure of the pipe by limiting the exposure time of the pipe connection to a chemical agent thereby saving replacement costs.

Claims 4, 5, 7, 24, 25, and 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaefer (542). The patent to Shaefer discloses the recited pipe fitting 10 which is formed of a material such as PVC or CPVC, where the fittings are used for fluid passages where the fluid is known to contain acids where CPVC is exhibits a high degree of chemical resistance to acids, and where the fitting is used with other CPVC pipe components. The use of the term DWV is considered to be merely intended use of the fitting and the fitting of Shaefer is capable of use as a drain. The use of Shaefer in systems that would be exposed to acids suggests that the fittings therefore are used in some manner to inherently carry materials such as industrial process waste or sanitary waste, and most certainly acid waste when such is formed of CPVC. The patent to Shaefer discloses all of the recited structure including that such are used with chemical attack in mind with the exception of disclosing what pitch the

connections are made with, however, applicant's disclosure on page 2, lines 11-16 set forth that it is old and well known in the art to form pipe connections for use in chemical environments with the same claimed pitch as is now set forth in the claims, therefore applicant is admitting such is old and known in the art. It would have been obvious to one skilled in the art to modify the pitch of the connections in Shaefer to be formed with a specific pitch as such is old and well known in the art as supported by applicants specification, and would help prevent failure of the pipe by limiting the exposure time of the pipe connection to a chemical agent thereby saving replacement costs.

Claims 4, 5, 7, 17, 18, 20, 21, and 24-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Condon in view of Shaeffer (542). The patent to Condon discloses the recited DWV pipe fitting 66 formed of PVC or ABS. The patent to Condon discloses all of the recited structure with the exception of forming the fitting of CPVC for use in various waste drains, and of a specific pitch. The use of the DWV fitting to handle various types of waste is considered to be an inherent ability of the material used and a teaching of the use of CPVC is considered to be teaching a material capable of carrying all the types of waste listed in the claims in that the material is the same as used by applicant and would inherently be usable for the same types of applications as such is merely intended use, and CPVC is inherently known to be connected using solvent cements. The patent to Shaeffer teaches the use of CPVC as an equivalent material used in where PVC is used in fittings to provide chemical resistance to acids and other materials. It would have been obvious to one skilled in the art to modify the DWV fitting in Condon by substituting CPVC for PVC to allow the fitting

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to be used in drains that would be exposed to acids or other dangerous materials as suggested by Shaeffer as such would lengthen the life of the fitting due to the improved properties of CPVC in acidic uses. The patent to Condon as modified discloses all of the recited structure with the exception of disclosing what pitch the connections are made with, however, applicant's disclosure on page 2, lines 11-16 set forth that it is old and well known in the art to form pipe connections with the same claimed pitch as is now set forth in the claims, therefore applicant is admitting such is old and known in the art. It would have been obvious to one skilled in the art to modify the pitch of the connections in Condon to be formed with a specific pitch as such is old and well known in the art as supported by applicants specification, and would help prevent failure of the pipe by limiting the exposure time of the pipe connection to a chemical agent thereby saving replacement costs.

Claims 4, 5, 7, 17, 18, 20, 21, 24, 25, and 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietzler. The patent to Dietzler discloses the recited pipe fitting C which is formed of a material such as PVC or CPVC, where the fittings are used for fluid passages where the fluid is known to contain acids where CPVC is exhibits a high degree of chemical resistance to acids and other chemicals, and where the fitting is used with other CPVC pipe components such as pipes 18. The use of the term DWV is considered to be merely intended use of the fitting and the fitting of Dietzler which is used as a drain. The use of Dietzler in systems that would be exposed to acids suggests that the fittings therefore are used in some manner to inherently carry materials such as industrial process waste or sanitary waste, and most



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certainly acid waste when such is formed of CPVC. The patent to Dietzler discloses all of the recited structure including that such are used with chemical attack in mind with the exception of disclosing what pitch the connections are made with, however, applicant's disclosure on page 2, lines 11-16 set forth that it is old and well known in the art to form pipe connections for use in chemical environments with the same claimed pitch as is now set forth in the claims, therefore applicant is admitting such is old and known in the art. It would have been obvious to one skilled in the art to modify the pitch of the connections in Dietzler to be formed with a specific pitch as such is old and well known in the art as supported by applicants specification, and would help prevent failure of the pipe by limiting the exposure time of the pipe connection to a chemical agent thereby saving replacement costs.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dietzler in view of Bertram. The patent to Dietzler discloses all of the recited structure with the exception of using CPVC in a pipe of different material. The patent to Bertram discloses that it is old and well known in the art to utilized materials such as linings of CPVC and PVC to line concrete pipes to protect against deterioration due to chemical attack. It would have been obvious to one skilled in the art to apply the pipe of Dietzler to the inside of a different material pipe as such is old and known in the art to provide the pipe of a different material with protection against chemicals as suggested by Bertram where such would save money in replacement costs of the pipe of different material.

***Response to Arguments***

Applicant's arguments filed March 20, 2006 have been fully considered but they are not persuasive. With respect to the arguments offered against the 102(b) statutory bar for public sale, see the rejection above which has been modified to insure that the record is clear on the first date of public sale or offer. With respect to the rejection under the Chemdrain reference, it is noted that the actual copy of the website page is not prior art, however, the statement on that page that drain pipes have been made of CPVC for 30 years is what is considered known prior art, see the added language above. The remaining arguments are directed toward the subject matter added to the claims with regards to a pitch, however, as set forth above applicants specification admits this is old and known in the art, therefore such is admitted prior art.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Roberts disclosing another state of the art drain made of CPVC.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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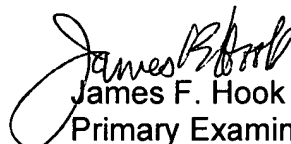
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
James F. Hook  
Primary Examiner  
Art Unit 3754

JFH